

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 34140 of 2006(L)

PETITIONER:

**M.J.MARY, W/O.LATE G.C.THOMAS,
AGED 74 YEARS, GOPALASSERY HOUSE,
ANAPPARA, KUNNAMANGALAM, NOW RESIDING AT
GOPALASSERY HOUSE, 28/680, NELLIKODE DESOM,
CHEVAYOOR POST, NELLIKODE VILLAGE, KOZHIKODE
TALUK.**

BY ADV. SRI.M.M.ALIAS

RESPONDENT:

**SHALY.K.S., KAYYALAMTHOTTIYIL HOUSE,
MANIKUNI, SULTHANBATHERY AMSOM,
SULTHANBATHERY DESOM, SULTHANBATHERY TALUK.**

BY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

M.SASIDHARAN NAMBIAR, J.

W.P.C.NO.34140 OF 2006 (L)

Dated this the 21th day of December, 2006.

JUDGMENT

This petition is filed under Article 227 of Constitution of India for a direction to District Court, Kalppatta to forward records in O.P.(Divorce)53/2000, to this court for confirmation under Section 17 of unamended Indian Divorce Act. Case of petitioner is that though divorce granted under Ext.P1 order, it was provided that the order of divorce is subject to confirmation by this court.

2. Ext.P1 order was passed on 17.03.03. As a result of Amendment Act, 2001, with effect from 3.10.01, sweeping changes have been made in the Indian Divorce Act. Under the unamended Act, if the decree for dissolution of marriage was made by the District Court, it has to come up for confirmation before the High Court. Section 17, which provides for confirmation of the decree was amended. The combined effect of section 16 and 17 was considered by a Full Bench of this court in

Suo Motu Reference in the Matter of Divorce Act (2002 (3) KLT
12). It was held that in cases where decrees were already passed prior to 2.3.01, which are pending for confirmation before High Court, they are to be disposed as provided under Section 16 and as amended Act came into force from 3.10.01, the orders passed there after need no confirmation. In such circumstances, there is no necessity to forward records in O.P.(Divorce)53/2000, to this court. Even without confirmation, the order of divorce passed under Ext.P1 is final.

**M.SASIDHARAN NAMBIAR,
JUDGE.**

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